Appendix

Appendix

APPENDIX A

Comments of the Trial Judge on the Evidence. (Statements unsupported by evidence or contrary to evidence are Italicized.)

In over 10 years that I have been on the bench I have never commented on the facts in any case but I felt in this case I should make some comments, but any comments I make I want the jury to understand you are not bound by those comments. I could tell you that I believe the defendant is guilty or not guilty but it is your duty in the exercise of your judgment as jurors to absolutely disregard such comments.

I am making these comments in order to help you arrive at a just verdict. In the first place there is no dispute that we have one man here who has *taken*[1] an oath of office to faithfully perform his duties as a member of the rent advisory board. *And it was also contained in that same statement that he was to perform those services without any charge.*[2] And then we have evidence, undisputed evidence that charges were made and the only dispute between the parties is whether this money was paid with the intent to influence his decision or action on any question pending before the rent advisory board. Was that the purpose? There is no question here as to that. It is admitted that he was appointed on the advisory board and considerable

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[1]Cly did not "take" the oath.
[2]The "oath" does not contain such a provision.

publicity was given to that fact and people came to him. And why did they go to him? Because he was a member of the advisory board. That was the only reason in the world for them to go to him, because he was a member of the advisory board. And what did they find? *Notwithstanding an individual who had agreed to make no charges he nevertheless did.*[3] There is only one man on trial and that is the defendant Cly and you are not to give any consideration to why other people are not on trial.[4]

Counsel for defendant has referred to that in his argument—if we let one fish go then why not let both go or words to that effect. The Government on the other hand has argued that it is important to the enforcement of this law.

Let me say to you that the only question here is whether or not this defendant *accepted bribes* as set forth in the indictment. You are not concerned with why Hill was not prosecuted or that other people may have escaped prosecution. You wouldn't bring in a verdict of guilty in this case in any event if you felt the defendant is not guilty. That wouldn't be fair. That would be crucifying this man as an example for something he hadn't done. If you were to find him guilty on general principle, the court wouldn't want that kind of a verdict.

Defense counsel claims that the main issue in this case is the question of intent—the intent with which

[3]There is no such evidence.
[4]The jury had a right to consider why Hill was not on trial as affecting his credibility.

this money was received, yet at the same time considrable stress is placed upon the Housing and Rent Act. As I have indicated before that is not a matter for your consideration whether you like it or not.

I imagine on this jury there are both landlords and tenants and there could be a first-class row among you if that is true.

I point this out because it is so easy for a jury to get off the beam as the expression is, and I can illustrate that best by a case I tried down on Tucson about a year ago.

The jury room was located in such a place that when the jurors raised their voices you could hear what they were discussing, and in hearing them I found they were discussing everything but the case. They were discussing me. They were trying to determine whether I was tougher than the other judge that had been there. It is so easy for a jury to get away from the subject matter and that is the reason I am pointing this out to you now.

I think there are probably four or five counts of this indictment that you should consider. I have tried to impress upon you the fact that the Rent Control Act is not an issue. *And then considerable stress is made that Mr. Koepke authorized them to make this charge.* Later on in my instructions I will cover that more specifically. Neither Mr. Koepke nor anybody else could authorize this defendant to *violate the law.*[5] That only goes to the question of intent. I couldn't authorize

him, the United States Attorney couldn't authorize him and Mr. Koepke couldn't authorize this defendant to *violate the law.*[5]

Both Mr. Hill and Mr. Cly testified that Mr. Koepke told them that and it is a question of fact for you to determine—did he tell them that? Does their conduct indicate that he told them that?[6] They testified he did. Mr. Koepke denied it *and he fired them for it.*[7] And did Mr. Cly get mad about it? No. He wrote him a letter and said:

'Dear Ben:

'I tender my resignation,'

and in effect he said:

'The contracting business is picking up.'

Does that indicate that a man has been accused of wrongdoing and resented it.?

They say they are amateurs. That is another defense for them—they are amateurs. There is always an amateur in a crime. [8] There is always the first offense. That is no excuse. That may be a plea to your leniency and also for your sympathy.

And then they talk about 'good business' in charging for these services and the hard work they did. *I*

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[5]This assumes that it was a violation of law to receive small sums reimbursing for time and expenses. It invaded the province of the jury, and assumed that defendant was guilty.

[6]This destroys the credibility of the witness for whom the government vouched as its own witness and therefore the government was bound by his testimony. If the court could not tell the jury to ignore the part of Hill's testimony that was unfavorable to the government and showed the defendant's innocence.

[7]Petitioner and Hill resigned. This is not being "fired."

don't care how much work they did or how hard the word was they did.[9] The question is did they have a right to accept *a bribe* because it required work. Would I be justified because I don't think I am getting paid enough to accept money from litigents and then say it was simply for my services.[10]

They say they were only supposed to be working while they were on the board, sitting on the board. Would I be justified in accepting money as an attorney and then pass upon the case before me and say that I was accepting the money as services and not as a bribe and be justified in doing it.[11].

How long would I last before a jury if I came here and told you that?

And then they want to tell you how much hard work they did. I don't care how much work they did. If it was a bribe it was a bribe and you can't call it anything else.

The question for you to determine is whether it was a bribe under all the circumstances and you can take into consideration why these people went to him.

With reference to the first two counts I agree with counsel. If I were on the jury I would find the defendant not guilty of those two counts because he didn't

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[8]This is an argument to the jury to convict. It assumes petitioner had committed a crime.

[9]A laborer is worthy of his hire. No statute or regulation forbad receipt of pay for time, labor, gasoline, expenses.

[10]This is an unfair comparison, since a judge is a paid "officer" of the U. S. forbidden from taking outside employment or any outside fees or compensation.

[11]This tells the jury the court disagrees with defense counsel as to all other counts and to convict thereon.

perform any official services. He may have committed some other offense. It may have been obtaining money under false pretenses. It may have been extortion or whatever you want to call it, but it wasn't a bribe because it was automatically decontrolled.

He accepted $677 without doing anything for them and there was nothing he could have done for them because the law provided for the decontrol of that property.[12]

So, if I were a member of the jury, I would find the defendants not guilty on Counts One and Two.[12]

There has been a lot of talk about the keystone in this case—cockeyed and so forth. I don't care whether it is a keystone or not but it seems to me the outstanding count in this indictment is the *Greco Case,* Count No. 5. What do we find? $300 paid to these men *and their advocating the matter before the board.*[13] As their advocate they were accepting money to advocate his cause and you can't spell anything else out of it, and not only once but three times, If I remember correctly, the evidence shows it was three times before the board—their board where they insisted, notwithstanding the fact that the Expediter had rejected them, they still insisted in advising him that the rents were unfair.

And then the other defense in this case is?

> 'Well, they didn't change my viewpoint anyhow. They were entitled to it.'

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[12]If this were true it would constitute the crime of theft, but not bribery, such a crime is inconsistent with bribery as it invokes a different intent. *Peo. v. Werner*, 29 Cal. App. 2d 126.

[13]Comparison with a judge's duties were unfair since a judge is covered by specific statute forbidding this.

As I will instruct you under the law *that is no defense.* You cannot pre-judge matters and collect money for it. Do you suppose because I happen to feel that Mr. Cly is guilty or not guilty and accepted money for it and had already determined that fact and come in and decided the case in his favor that that wouldn't be a bribe?[14] That is no excuse, that he was going to decide the case that way anyhow.

The important thing in this case is, (and that is one reason I am discussing the facts in this case) there might be a tendency on the jury's part to feel that here is a racket and that the jury is going to break it up: 'We are going to punish him for it,' but you want to remember there is only one offense involved here and that is did this defendant accept a bribe for the purpose of influencing his action as a member of the Board. You might resent what Mr. Cly did in this case but unless you believe he accepted a bribe it is your duty to find him not guilty.

Now, the comments I am making in this case are not to be taken by you too seriously. They are not binding upon you. You can absolutely ignore them. The fact is you can find any verdict contrary to anything I have expressed and that is your privilege because you are the trier of the fact in this case. I am making these comments in an effort to enable you to, what I would say, stay on the beam so when you go to the jury room you will know the issues to be deter-

[14]These comments overlook the other elements the government had to prove. This was not the charge in the indictment.

mined. I think it can correctly be said if the defendant is not guilty under Count Five of the indictment then you should acquit him on all the other counts *because there are all the elements that the Government has claimed in that count, except intent, and that is for you to determine from the facts.*[15] If you don't believe or if there is a reasonable doubt in your mind as to his intent on Count Five then why waste or spoil your afternoon, bring in a verdict of not guilty and acquit him, let him go home and you can go about your business.

As I said before these comments are not binding on you. After you have considered Count Five you will then be in position to consider the other counts of the indictment. The exhibits in the case will be sent to you in the jury room. If there is any count in the indictment the defendant is guilty of it is certainly Count No. 5 providing, of course, you find there was an intent to accept money to influence his conduct as a member of that board. (R. 570-577.)

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[15]These comments overlook the other elements the government had to prove. This was not the charge in the indictment.

APPENDIX

B

Jury Instructions on the Fundamental Issues on the Case.

And the court further instructed the jury as follows:

"This action or indictment has been brought under Section 202 of Title 18 effective September 1st, 1949 and a former section, Section 207. In other words, during the course of the time Mr. Cly was acting as a member of the board *the law was changed* but not substantially changed so far as the law is concerned in this case. I will read to you *only* Section 207 which is entitled: 'Official Accepting Bribe.'

> 'Whoever, being an officer of the United States, or a person acting for or on behalf of the United States, in any official capacity, under or by virtue of the authority of any department or office of the Government thereof; or whoever, being an officer or person acting for or on behalf of either House of Congress, or of any committee of either house, or of both houses thereof; shall ask, accept, or receive any money, or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceedings which may at any time be pending or which may by law be brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be guilty of an offense.'

"Section 204(e) and (1) referred to in the indictment, as the authority under which the local advisory boards were created, reads in part as follows:

'(e)(1) The housing Expediter is authorized and directed to create in each defense rental area, or such portion thereof as he may designate, a local advisory board, each such board to consist of not less than five members who are citizens of the area and who, insofar as practicable, as a group are representative of the affected interests in the area, to be appointed by the Housing Expediter, from recommendations made by the respective governors: Provided, that in any case where the governor has made no recommendations for original appointments to local board or appointments to fill vacancies, within 30 days after request therefor (subsequent to the date of enactment of the Housing and Rent Act of 1948) from the Housing Expediter; the Housing Expediter shall without such recommendation appoint the original members of such boards or such members as may be required to fill vacancies.

'Any local board may make such recommendations to the Housing Expediter as it deems advisable with respect to the following matters:

'Removal of any or all maximum rents in the area, or any portion thereof, over which the local board has jurisdiction.

'Adjustments other than individual adjustments in maximum rents in such area or any portion thereof or with respect to any class of housing accommodations within such area or any portion thereof, deemed by the local board to be necessary

to remove hardships or to correct other inequities, or further to carry out the purposes and provisions of this title; and

'Operations generally of the local rent office with particular reference to hardship cases;

The Housing Expediter shall furnish the local boards suitable office space and stenographic assistance and shall make available to such boards any records and other information in the possession of the Housing Expediter with respect to the establishment and maintenance of maximum rents and housing accommodations in the respective defense rental areas which may be required by such boards.'

'The Office of Housing Expediter, together with its rent advisory boards, constituted an agency of the United States Government during the years 1947 and including the period January 11, 1949, the effective date of resignation of the defendant Monte Cly from such board.

. . .

You are instructed that to fall within the meaning of the section of the criminal code under which the defendant has been indicted it is *not necessary that he was an officer of the United States,* but it is sufficient *if he was a person acting for or on behalf of the United States in any official capacity under the authority of any department or office of the Government.*[16]

You are further instructed that under the circumstances here presented the defendant in his capacity as

[16]This in effect changed the indictment which charged that he was an officer of the U. S. and told the jury it could convict even though he was not an officer. See *Ex Parte Bain*, 121 U. S. 1.

a member of Rent Advisory Board No. 8 is a person acting for or on behalf of the United States in an official capacity, within the meaning of Section 207, Title 18, U. S. C.

* * *

The fact that Lindsay T. Hill divided with the defendant the money received by him is of no significance unless you also find that such division was made and the money paid to the defendant for the express purpose of influencing *his action in favorably recommending to the Housing Expediter that certain action be* taken by him."[17] (R. 578-581.)

* * *

The court further instructed the jury as follows:

> "The fact that you might believe from the evidence introduced to you by the prosecution or the defense during the course of this trial, that certain other persons or witnesses not named in the indictment were in fact parties to the offense and should have been so named, or prosecuted, is not to be considered by you in favor of or to the prejudice of the defendant who is on trial. Your only concern is to determine the guilt or innocence of defendant Monte Cly who has been named as a defendant in the indictment before you." (R. 584.)[18]

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[17]This was not the charge in the indictment. Petitioner was charged with receiving money to influence his action as a member of the Board in a matter then pending before him in his official capacity.

[18]The jury had a right to consider whether under the facts of this case the government thought Hill, who had taken most of the fees personally—some without any knowledge on the part of appellant in the first instance, and had given half to appellant, acted innocently and with the government's consent, the government being bound by Hill's testimony, the court could not destroy it.

APPENDIX C

EXCEPTIONS TO "COMMENTS"

'The following proceedings were had in the absence of the jury):

"THE COURT: I will listen to any exceptions counsel has to make.

MR. SHIPPEE: While I am satisfied that the court's emphasis on the fact that the jury were the sole judges of the weight and sufficiency of the evidence, nevertheless it is necessary, I think properly so, in order to preserve the record, that I offer an objection to that part of the court's instructions embraced within the comments on the evidence.

THE COURT: They were not part of my instructions.

MR. SHIPPEE: I understand the rule is that it is a part of the court's instructions finally.

THE COURT: In any event, I did make comments. There is no question but what I commented.

MR. SHIPPEE: That is true, and they are embraced within the address of the court to the jury and we have no control over them.

I think that we do have a right to present to the court the situation as we see it where the jury may have received a misapprehension of the evidence. Otherwise, the court, under the guise of commenting on the evidence, could go far afield

and we would have no method whereby we could present an objection or an exception to it. . . . .

THE COURT: May I ask, counsel, is there any statement of fact that I made to the jury that wasn't in the evidence?

MR. SHIPPEE: Yes, your Honor. That is to say, the court said this, in effect—the court said that we had argued to the jury in connection with the defendant Hill, in effect that is, that if they let one go fishing, why not let the other go fishing.

Now I want to point out to the court, and I think the court will remember it, that I made no statement to the jury either directly or indirectly, regarding the effect of the dismissal of this case on Hill upon the remainder of the case. My argument, if the court will recall, was to the proposition that the government, having advanced Hill as a witness, had vouched for him as a truthful witness and that therefore his evidence should be given the same probative value as was to the other witnesses.

I pointed out, likewise, if the court please, that he had not received any offer of immunity and therefore it was not a case of letting one scoundrel go to have him testify against the other. I think I made that statement.

THE COURT: I understand your point. . . .

THE COURT: Exception noted.

MR. SHIPPEE: I think I should enter a formal objection to the court's statement that the jury should first take up Count No. 5.

Now I am not going to belabor that proposition but merely content myself with the statement that

I think that invaded the province of the jury in their consideration of the facts in the case.

THE COURT: Counsel, I haven't told the jury that this man is guilty. I haven't expressed an opinion that he is guilty.

MR. SHIPPEE: That is absolutely correct.

THE COURT: I tried to bring it down to the question of intent and I think when you take all of the camouflage away that has been built around the case, that is the only question involved. What was the intent with which he received this money.

MR. SHIPPEE: Exactly.

THE COURT: That is the sole issue. I would say this, if they find him guilty at all and they don't find him guilty on count 5 I might be susceptible to a motion for a new trial.

THE COURT: Counsel, I am perfectly willing for you to take exception to my comments to the jury." (R. 590-594.)

APPENDIX D

Here are the:

"SPECIFICATIONS OF ERRORS IN COURT OF APPEALS FOR THE NINTH CIRCUIT"

"The appellant specifies the following errors in the record of the trial of the proceedings:

1. (a) The indictment in the counts on which conviction was had fails to state an offense against the laws of the United States. It fails to allege that they "took" the oath of office, and before one authorized to give it. It also fails to state in such counts that they duly and regularly became officers of the United States as members of Rent Advisory Board No. 8 of the Los Angeles Defense Rental Area.

   (b) The Public Law No. 129, 80th Congress, cited as the Housing and Rent Act of 1947, does not forbid the taking of money for services rendered in connection with the Housing Act, and such acceptance of money was not made unlawful by the act.

2. The evidence is insufficient to support the verdicts. The verdicts are contrary to the law and the evidence.

   (a) The evidence fails to show that the defendant Monte Cly duly and regularly actually became a member of the Rent Advisory Board No. 8. The evidence is that he *signed* an Oath of Of-

fice, but the Oath of Office on its face shows that it was not signed before an officer duly authorized to take oaths of office or that he was ever lawfully given the oath of office and inlucted as a lawful member of the Advisory Board.

(b) The evidence is insufficient to show that the defendant Cly was duly appointed pursuant to the provisions of Public Law 129, 80th Congress, and in the manner prescribed by law for such appointment. The evidence shows that he was solicited to become a member of the Board by a Supervisor.

(c) The evidence is insufficient to show that any matters in which monies were taken "were matters then pending before Monte Cly in his official capacity as a member of the Rent Supervisory Board." Count Three alleges taking $50.00 from Mr. and Mrs. Claude W. Chapman, and that the matter was pending before the Board and its members in their official capacity. The evidence fails to show that the matter was pending before the Board in its official capacity. Count Four charged taking $250.00 from Mr. and Mrs. Harry Neiditch, which was not shown by the evidence to be pending before the Board in its official capacity. Count Five charged the taking of $300.00 from Don Greco, which was not shown by the evidence to be pending before him in his official capacity. Count Seven charged the taking of $100.00

from Norman Westcoatt, Executor, which was not shown by the evidence to be a matter then pending before the Board in their official capacity. Count Eight charged the taking of $135.00 from Mrs. Mabel Preston, which was a matter not then shown by the evidence to be pending before the Board in its official capacity. Count Nine alleged the taking of $50.00 from Mrs. Frances Barker, which was a matter not then shown by the evidence to be pending before the Board in its official capacity. Count Eleven charged the taking of $50.00 from Mr. and Mrs. Frank Cohen, which was a matter not then shown by the evidence to be pending before the Board in its official capacity.

(d) The evidence of the government shows affirmatively any lack of criminal intent. The government is bound by the testimony of its witness Mr. Hill.

(e) The evidence is lacking in proof of any criminal intent.

3. The Court erred in admitting testimony of alleged similar transactions regarding Earl J. Templeton (R. Tr., 90, 110) over objections.

4. The Court erred in the admission and exclusion of evidence.

5. The Court erred in its comments to the jury on the facts of the case. The comment was one-sided and unfair in its scope and virtually told

the jury to convict. It added to the facts, and assumed facts not proved and destroyed the constitutional privilege of the accused to testify in his own behalf before the jury without destruction by judges "comment".

The Court erred in its instructions to the jury. The instructions were confusing on the essential law of the case, as charged in the indictment.

It will be noted that the brief does not have a "So-called Specification of Errors" containing 12 paragraphs as set out in the opinion of the Court of Appeal. The opinion deals mostly with the "So-called Specification"—and practically none with the important questions of criminal law and lack of proof of guilt raised by our appeal. We ask this Court to act under its supervisory power in these matters.

MOTION FOR LEAVE TO PROCEED UPON THE TYPEWRITTEN RECORD:

COMES NOW THE PETITIONER AND PETITIONS FOR LEAVE TO PROCEED UPON THE TYPEWRITTEN RECORD on appeal. The typewritten record has been forwarded to the clerk of the court by the Court of Appeals where we proceeded upon the typewritten record. The record is quite long and it would be quite costly to print the record. The petitioner is a local realtor with a neighborhood business, who has been under financial distress since this case and therefore requests leave to proceed upon the typewritten record.

Respectfully,

MORRIS LAVINE,
620 Bartlett Building
215 W. 7th St.,
Los Angeles 14, Calif.
Attorney for Petitioner.

SUPREME COURT OF THE UNITED STATES

No. 740, October Term, 1952.

MONTE CLY,

Petitioner,

vs.

UNITED STATES OF AMERICA

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon consideration of the application of counsel for petitioner(x),

It is ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 1, 1953.

S/ Wm. O. Douglas
Associate Justice of the Supreme Court of the United States

Dated this 28th day of March, 1953.

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Cohen v. *United States*, 144 F. 2d 984, certiorari denied, 323 U. S. 797 — 14

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United States v. *Canella*, 63 F. Supp. 377, affirmed, 157 F. 2d 470 — 17

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 740

MONTE G. CLY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Tr. 47–53) [1] is reported at 201 F. 2d 806.

JURISDICTION

The judgment of the Court of Appeals was entered on January 29, 1953 (Tr. 54), and a petition for a rehearing was denied on March 3, 1953 (Tr. 55). On March 28, 1953, the time for

[1] The symbol "Tr." refers to the separately paginated first volume of the typewritten record, containing the proceedings in the Court of Appeals; the symbol "R." refers to the remaining four volumes consisting of the typewritten copy of the trial minutes.

filing a petition for a writ of certiorari was extended by order of Mr. Justice Douglas to May 1, 1953. The petition was filed on April 23, 1953. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether the indictment alleges facts sufficient to constitute an offense against the United States.

2. Whether the evidence was sufficient to sustain petitioner's conviction.

3. Whether the trial court erred in admitting on the issue of intent testimony involving a separate transaction of the type involved in the offenses charged.

4. Whether the trial court erred in its comments on the evidence and instructions on the law.

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra.*, pp. 21–26.

STATEMENT

On August 10, 1950, a fourteen count indictment (Tr. 2–12), charging petitioner and one Hill with accepting bribes while acting in an official capacity for the United States, was filed in the United States District Court for the Southern District of California. Specifically, the several counts charged

that, between April 26, 1948, and December 20, 1948, in Los Angeles County, California, petitioner and Hill, both of whom had been duly appointed and had "signed the oath of office as" members of the Rent Advisory Board No. 8 of the Los Angeles Defense Rental Area,[2] had accepted, either jointly or severally, from various landlords, checks or cash, in amounts varying from $45 to $500, "with the intent that their action would be influenced thereby in favorably recommending to the Housing Expediter" certain rent increases, such being matters "then pending before them in their official capacities" (Tr. 2–11).[3] Petitioner was tried alone (R. 1–362).[4] He was found guilty on counts 3–5, 7–9 and 11 (R. 596–597; Tr. 31), and was sentenced to concurrent terms of 18 months' imprisonment on each count and fined varying amounts as to each count.

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[2] The Advisory Board had been created pursuant to the provisions of Section 204 (e) 1 of the Housing and Rent Act of 1947 (61 Stat. 197, 50 U. S. C. App. (1946 ed., Supp. I) 1894 (e) (1)), which was later amended by Section 202 (d) of the Housing and Rent Act of 1948 (62 Stat. 93, 95, 50 U. S. C. App. (1946 ed., Supp. II) 1894 (e) (1)).

[3] Counts 1, 5, 6, 11, 13, and 14 (Tr. 2–4, 6–7, 9–10, 10–11) charged violations of the provisions of 18 U. S. C. (1946 ed.) 207, while the remaining counts (Tr. 4–5, 7–9, 10) charged violations of the provisions of 18 U. S. C. (1946 ed., Supp. V) 202.

[4] In February 1951, the indictment was dismissed as to Hill on motion of the Government (R. 242, 244). Hill testified on behalf of the Government during petitioner's trial (R. 182–284, 358–359, 530–560).

aggregating $2,555 (Tr. 37–38). On appeal, the judgment of conviction was affirmed (Tr. 54).

The evidence to support the conviction may be summarized as follows:

On November 6, 1947, petitioner, a real estate broker and general contractor, signed an "oath of office" as a member of Rent Advisory Board No. 8, one of twelve local boards within the Los Angeles Defense Rental Area (R. 239–241, 445, 312, 344; Gov. Ex. 14, R. 302). Such office carried no remuneration, and a statement to that effect was prefixed to the oath of office (R. 215, 303, 445–446).[5] A handbook of instructions to board members stated that members were expected to attend the board's meetings for about an hour, once or twice a month (R. 375, 443–444). Like petitioner, Hill was also a member of Board No. 8 (R. 183).

The main purpose of the various local advisory boards was to advise the Area Rent Director or Housing Expediter concerning rental conditions peculiar to their particular localities (R. 306, 307). They were also empowered to review, on appeal to them, the Director's orders granting

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[5]A provision allowed payment to board members only for mileage and per diem, whenever they were away from their official stations overnight (R. 304–306). The boards were provided with office facilities in the Area Rent Director's office, stationery, and a secretary-stenographer, who was employed by the Director, but who was always available to board members (R. 214, 216, 304, 311–312, 462, 463–464).

or denying individual petitions for increases in, or decontrol of, rentals of property within their jurisdiction (R. 306–307, 308, 313), and to make recommendations to the Director, who was not bound to and did not follow them if, on the basis of reports from his inspectors, he considered the recommendations unreasonable (R. 309, 271, 313–314, 331). The Area Rent Office did, however, generally adopt the board's recommendation, if it was "anywhere near reasonable" (R. 308–309, 192, 211–212, 271).

As a result of newspaper publicity attending his appointment as a board member, petitioner was besieged at home and in his realty office by landlords and tenants seeking advice with respect to their rental problems (R. 250–251, 376–377, 442). Although it was never intended that as part of their duties the board members would prepare or file petitions on behalf of individuals seeking rental relief or do anything more than refer such individuals to the Area Rent Director's office, petitioner, working together with Hill, did prepare and file such petitions (R. 307–309, 251, 255–256, 376–378).

Admittedly, around June 1948, in order "to do something to keep living," petitioner and Hill agreed to accept fees for preparing and filing petitions for landlords of large apartment units for whom they "felt" they "could do some good" (R. 470, 478, 283, 377, 200, 205, 251, 392). It was

also understood between them that petitioner was to use his realty office in Venice, California, and "connections" in getting "clients," while Hill would do the necessary paper work connected with the preparation and filing of the petitions, and that they would both share the fees equally (R. 200, 520, 202, 277, 392). Accordingly, they admittedly accepted fees in approximately 10% of an estimated 150 to 200 cases handled by them (R. 283, 378, 470).

In each instance where payment was accepted, Hill, after satisfying himself by a personal inspection (which was not a part of his official duties) that the rental unit deserved an increase, prepared the necessary petition for an increase and mailed it to the Area Rent Director's Office (R. 223–224, 256, 391, 410, 411, 269, 208, 496–497, 539–540). Normally, such petitions would be processed in the Director's office whence an order granting or denying the requested relief would issue (R. 209, 270, 307, 308, 313). Unless an applicant for relief appealed from the order, his petition normally would not come before the Advisory Board (R. 306–307, 329, 466.) But there was nothing to prevent the Chairman of the Advisory Board from obtaining a transfer of any petition from its usual channels directly to the Board for its consideration and recommendation, before the Director had acted thereon (R. 309, 329). Although no other board member had ever

requested a transfer to the board of any petition, Hill and petitioner effected such transfer of several "justifiable" petitions (R. 258, 329, 354, 466, 271). During 1948, petitioner and Hill attended all board meetings, and whenever a petition in which they had accepted a fee appeared before the board, they voted in favor of granting the relief requested (R. 184, 192, 330, 214, 465, 467).

Hill, as a witness for the Government (R. 216, 252–254), and petitioner, on his own behalf (R. 383–389), testified that, prior to accepting any fee, they informed Koepke, the Area Rent Director, or Housing Expediter (R. 528), about the inordinate number of people seeking their services in the preparation of petitions, and the latter advised them to charge fees for their "time and trouble" apart from their attendance at Board meetings. Petitioner also testified that about a week before receiving such advice he consulted Koepke concerning the propriety of his going to Washington for the purpose of getting increases in seasonal or summer rents for certain beach-property owners who had pooled some money to pay for his trip, to which Koepke replied, "I don't see anything that can stop you" (R. 379–380). Koepke testified that he never had any conversation with petitioner concerning compensation for services other than the one concerning the pooling of a fund for sending petitioner to Washington (R. 310–311). Koepke also testified that

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he had never authorized petitioner "to charge landlords or tenants for any of his services", and that upon learning about petitioner's acceptance of fees, he requested and received petitioner's resignation, after accusing him of wrongdoing (R. 311, 317–319, 321, 324, 456, 459).

The counts on which petitioner was convicted relate to the following incidents:

Count 5.—Around June 1948, petitioner and Hill inspected the Santa Monica property of Don Greco, at the latter's request, and advised him that he was entitled to a substantial rental increase which "they would help" him obtain, but that it would cost him $300, as "expense money" (R. 169–171, 175, 188–189, 198, 419, 420, 421). Greco, who "thought" that "Hill had something to do with" the Rent Advisory Board and "presumed" that petitioner was a member thereof, testified that he paid either petitioner or Hill, in Santa Monica, $300 in cash for the preparation of the necessary papers and not to buy any "favor," although he knew that the papers would come before the board (R. 171–172, 176–178, 189, 421, 498, 201). On June 29, 1948, Hill, knowing that the matter would come before his board, prepared and filed an application for a rental increase on the Greco property, after checking "comparable rents" in the Rent Director's Office (R. 199, 189, 191–192, 198, 200). Later, a recommendation for a substantial rental increase was initiated by the

board itself. (Gov't. Ex. 23; R. 569, 546.) Subsequently, Hill accompanied inspectors from the Rent Director's Office in making an inspection of Greco's property (R. 192, 260). Petitioner and Hill made vigorous protests against the inspector's report, which recommended a $5 per unit increase on Greco's property. They were instrumental in placing the Greco matter on the board's agenda on three subsequent occasions, on each of which the board recommended a reinspection of the property and a larger rent increase. (R. 190, 192, 193, 260, 421, 468, 556; Gov't. Exs. 13–15, R. 300, 302, 442–425.) [6] Following several reinspections of the property by his office, the Rent Director declined to accept the board's recommendations, and finally authorized for Greco only a $5 per unit rental increase (R. 421–425, 174, 175).

Count 3.—On December 6, 1948, Claude Chapman gave petitioner, in the latter's office, a check for $50 in payment for an application to the Rent Director for relief from certain rental ceilings previously placed by the O. P. A. on his apartment units in Venice (R. 14–19, 24–26, 33, 36,

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[6] The inspector's report stated that photographs filed with Greco's petition were representative of the furnishings and the interior of only one rental unit, which was "occupied by a tenant who is an interior decorator and the furnishings, color scheme and decorative objects were all the tenant's possession and own execution and not of the type or character supplied with the other units" (R. 341–342, 502–503).

37, 208, 410, 411–412; Gov't. Ex. 1; R. 22, 21). Chapman made the check payable to petitioner even though the latter requested that it be made payable to "Cash" (R. 27). When, prior to making the payment, Chapman informed petitioner that he would prefer the Apartment House Association to make the application for him gratis, rather than pay the fee demanded by petitioner, the latter asked, "Why do that, on account that we are the Advisory Board, and it has to go through us anyway?" (R. 20, 28–29.) Chapman testified that although he knew Hill and petitioner to be members of the Rent Advisory Board, he did not make the payment to "bribe" them, but in order to "get quicker results" (R. 29–31).

Count 4.—On November 15, 1948, Mrs. Harry Neiditch, noting a reference to "Rent Board" in petitioner's office window, and feeling "sure" that she "was dealing with competent people," gave Hill a check for $250, payable to "Cash," as a fee for securing a rental increase on her property in Santa Monica (R. 71, 72, 76, 73–74, 217–220, 416; Gov't. Ex. 5, R. 221). Petitioner shared in half the proceeds of the check (R. 220, 418). Hill prepared and mailed the necessary papers to the Rent Director's Office (R. 218). When the matter came before it, the board acted favorably on the petition (R. 220, 221, 264).

Count 7.—On November 20, 1948, Westcoatt, who was dissatisfied with a previous rental increase on an estate of which he was an executor in Venice, paid petitioner in his office a fee of $100 in cash, not for the purpose of buying "influence," but to avoid "red tape" involved in seeking a still further increase in rentals (R. 129, 133, 134–135, 138, 143, 145–148; Govt. Exs. 6–7, R. 137). Hill prepared the necessary application and transmitted it to the Rent Director's Office (R. 224, 549). When the matter came before it, the board recommended a rental increase, which was later granted by the Director (R. 224–225, 134, 136).

Counts 8 and 9.—On September 4, 1948, Mabel Preston and Frances Barker, who owned, jointly and severally, certain property in Santa Monica, and who knew petitioner to be a rent control official, paid him in his office, respectively, $90 and $45 in cash in order to obtain rent increases (R. 154–156, 157–158, 159, 162, 166–167). Hill prepared and filed with the Rent Director the necessary papers, and the board itself initiated the action for a rental increase on their property (R. 505, 550; Govt. Ex. 20, R. 569, 544). Subsequently, an increase in their rentals was authorized by the Director (R. 159, 160).

Count 11.—In June 1948, petitioner referred Mr. and Mrs. Frank Cohen to Hill who, after clearing objections as to their overcharges on

rentals, filed for them with the Area Rent Director a petition for a rental increase, for a fee, paid in petitioner's office, of about $35, of which petitioner received one-half (R. 231, 232, 233, 433–434, 435–436, 500, 543, 550–551; Gov't. Ex. 19, R. 569, 543. When, through the board's own action, the matter came before it, the board recommended an increase, but the Rent Director refused to follow the recommendation and ordered a decrease in the Cohens' rentals (R. 434, 435, 500; Gov't. Ex. 14, R. 302, 339–340).

With respect to petitioner's intent, Earl Templeman testified for the Government (without objection by petitioner's counsel,[7] who cross-examined him) as follows:

In the early part of December 1948, Templeman, who knew petitioner and Hill to be Advisory Board members, called at the latter's residence in order to discuss an application for a rental increase which had been returned to him by the O. P. A. without any action taken thereon (R. 90–91, 94–95, 97, 99, 110). Petitioner was also present (R. 91–92).[8] Instead of looking at his papers, either Hill or petitioner stated, "Well, we have been all around a little. We don't par-

[7] Petitioner's motion, at the end of Government's case, to strike Templeman's testimony was denied (R. 363–365).

[8] On examination by the defense, Hill testified that Templeman had visited him in connection with a rental problem, but he denied that he had suggested the payment of any money (R. 272–277). He also testified that he didn't "think" petitioner was present on that occasion (R. 275).

ticularly care about what is in those papers. You know how business is done. The boys down at the O. P. A. office have to live, too" (R. 92, 103). Finally, they suggested that it would cost Templeman $100, part of which would go to some individual in the Rent Control Office (R. 92–93). Templeman never accepted the proposition (R. 94, 108).

ARGUMENT

1. Petitioner, among the nineteen questions on which he seeks review, contends in effect (Pet. 33–34, 49, 53–54, 56) that the indictment alleging that he accepted bribes, with intent to influence his official action as a duly appointed and sworn member of a Rent Advisory Board created under the Housing and Rent Act of 1947, is insufficient to charge an offense under 18 U. S. C. (1946 ed.) 207,[9] because (1) the Board was not an "office"

[9] Although, of the seven counts on which petitioner was convicted, only counts 5 and 11 were based on 18 U. S. C. (1946 ed.) 207, while the remaining counts, which alleged offenses occurring after September 1, 1948, were predicated upon 18 U. S. C. (1946 ed., Supp. V) 202, petitioner seems to base his challenge to all the counts upon the construction of the provisions of the former section, because the judge stated in his charge that, since the two sections were the same except for "minor changes" in phraseology, he deemed it unnecessary to read the latter statute as well as the former. However, the assumption that for this reason all counts are laid under Section 202 is patently absurd since it was sufficient for the judge merely to present the necessary elements of the offense to the jury.

On the same reasoning, petitioner attacks the counts which charged payment by check (Pet. 49–50), relying upon

of the United States, and therefore he could not have been an "officer" of the United States, within the purview of the statute, and (2) the indictment does not state that his oath of office was duly taken "before a person authorized to give such oath," as provided by 5 U. S. C. 16 and 18 with relation to "officers" of the United States. But the indictment clearly alleged facts which show that petitioner was not an "officer," but a "person acting for or on behalf of the United States, in any official capacity, under or by virtue of the authority of any department or office of the Government thereof" within the terms of former 18 U. S. C. 207, as well as a person acting "by virtue of the authority of" an agency of the United States within the terms of present 18 U. S. C. 202. It has long been established that persons acting under "the authority of any department or office" as used in the earlier statute included persons acting under the authority of any governmental body of the United States. See *Cohen* v. *United States,* 144 F. 2d 984 (C. A. 9), certiorari denied, 323 U. S. 797; *United States* v. *Birdsall,* 233 U. S. 223;

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statement in an old case, *United States* v. *Green,* 136 Fed. 618, 651 (N. D. N. Y.), affirmed, 199 U. S. 601, that a check is not an obligation for the payment of money within the purview of the bribery statute antedating former Sec. 207. It is unnecessary to consider now the present validity of the *Green* case since all counts charging petitioner with receiving payment by check, on which he was convicted, are predicated on 18 U. S. C. 202, which explicitly covers payment by "check."

United States v. *Levine,* 129 F. 2d 745 (C. A. 2); *McGrath* v. *United States,* 275 Fed. 294 (C. A. 2). See also Reviser's Note, 18 U. S. C. (1946 ed., Supp. V) 202. The statement in the indictment that petitioner was "duly appointed pursuant * * * to the Housing and Rent Act of 1947" sufficiently alleges his official status as an element of the crime charged.

2. Petitioner also contends (Pet. 34, 36, 51–52, 57) that even though he admittedly accepted the payments charged in the counts on which he was convicted, the evidence is insufficient to sustain his conviction, because (a) it failed to prove, as charged in the indictment, that the matters with respect to which he accepted payment were then pending before him in his official capacity, and (b) it failed to prove corrupt intent on the part of the persons making the payments.

(a) There was clearly sufficient evidence from which the jury could reasonably have inferred that the matters with respect to which petitioner accepted payment were then "pending" before him in his official capacity. Petitioner himself had testified concerning the high degree of selectivity of the cases in which he accepted payments. According to his *modus operandi,* he did not accept payment until, through Hill's inspection of the rental units, he assured himself that a landlord was entitled to a rental increase and the necessary application for such increase was exe-

cuted and ready for filing with the Rent Director's Office. Since the filing of such applications and their routing in the Rent Director's Office were subject to petitioner's control, the permissible inference is that the applications were in effect pending before petitioner in his official capacity at the moment when, by accepting payment, he obligated himself to do everything in his power to obtain favorable action on what he had already prejudged as a deserving or "justifiable" application. Cf. *United States* v. *Holmes,* 168 F. 2d 888 (C. A. 3); *United States* v. *Levine,* 129 F. 2d 745 (C. A. 2); *Beach* v. *United States,* 19 F. 2d 739 (C. A. 8), certiorari denied, 276 U. S. 623.

Moreover, assuming that the evidence merely proved that petitioner had accepted bribes concerning matters which, officially, were to come before him at some future date, whereas the indictment alleges that such matters were pending at the time of the acceptance of the bribes, the variance is not fatal. See *Berger* v. *United States,* 295 U. S. 78, 82; *United States* v. *Remington,* 64 F. 2d 386 (C. A. 2); *Panella* v. *United States,* 140 F. 2d 71 (C. A. 4); *Mays* v. *United States,* 289 Fed. 486 (C. A. 4), certiorari denied, 263 U. S. 706. The reasons for the rule that allegations and proof must correspond are to prevent the accused from being taken by surprise in the presentation of his defense, and to protect him

against another prosecution for the same offense. *Berger* v. *United States, supra; Malatkofski* v. *United States,* 179 F. 2d 905 (C. A. 1). Here petitioner was fully informed that the charges against him consisted of his acceptance of payments with respect to rent-increase applications of certain named landlords concerning certain described property, with all of which petitioner was fully familiar. He could not have been misled or prejudiced at the trial. The *gravemen* of the offenses of which he was convicted was not the filing of the applications for rental increases, but the acceptance of payments to influence his official conduct. *Whitney* v. *United States,* 99 F. 2d 327 (C. A. 10); *United States* v. *Canella,* 63 F. Supp. 377 (S. D. Cal.), affirmed, 157 F. 2d 470 (C. A. 9). See *Malatkofski* v. *United States supra.* And his present conviction would clearly protect him against another prosecution for the acceptances of bribes which were the basis for the present prosecution.

(b) Intent of one making payment to corrupt the official receiving such payment is not an element of the offense of bribery. There is nothing in the language of the statute to suggest that the offense of bribery is negatived unless the one making the payment to a corrupt official simultaneously commits the offense of offering a bribe under 18 U. S. C. 201, any more than there is in the latter statute language which would

neutralize the offense of offering a bribe unless the offeree criminally intends to receive it as such. See *Malatkofski* v. *United States,* 179 F. 2d 905 (C. A. 1). If, as petitioner contends, reciprocity of criminal intent between the payor and recipient were a prerequisite to the offense of bribery, then a payee of a bribe could never be convicted of an offense where the "briber" or the person to be bribed merely acts as a "decoy" under police instructions.

3. Petitioner's contention (Pet. 34–35) that he was prejudiced by the admission of Templeman's testimony, because it involved a separate transaction unrelated to any of the offenses charged, is without merit.

Templeman's testimony related to a transaction similar in nature to the acts charged in the indictment, and it was properly admitted for the limited purpose of showing petitioner's intent—the crucial issue in the case. It is well established that testimony relating to transactions other than those on which the prosecution is based are admissible to establish the element of intent of the crimes charged. *Nye & Nissen* v. *United States,* 336 U. S. 613, 618; *Canella* v. *United States,* 157 F. 2d 470 (C. A. 9); *United States* v. *Baneth,* 155 F. 2d 978 (C. A. 2); *Henderson* v. *United States,* 143 F. 2d 681, 683 (C. A. 9); *Fall* v. *United States,* 49 F. 2d 506 (C. A. D. C.), certiorari denied, 283 U. S. 867.

4. In submitting the case to the jury, the judge charged that the significant question was whether petitioner had accepted a bribe for the purpose of influencing his action as a member of the Board (R. 572, 576). He pointed out that the jury's reaction to rent-control (R. 572) or its possible dislike of the practice of accepting money were not relevant, stating, "You might resent what Mr. Cly did in this case but unless you believe he accepted a bribe it is your duty to find him not guilty" (R. 576). Commenting on the evidence, he said that if he were on the jury, he would find the defendant not guilty on counts 1 and 2 (R. 575), and that he thought the outstanding count in the indictment was count 5 (see evidence with respect thereto summarized in the statement, *supra,* pp. 8–9), since if there was a reasonable doubt as to intent on that count, petitioner should be acquitted on the other counts as well (R. 575, 577). But at the beginning of the charge (R. 571) and with respect to comments on count 5 (R. 577), the judge told the jury that such comments on the evidence were not binding and could be absolutely ignored.

It is clear that the judge did not exceed the limits of permissible comment in the federal courts. *United States* v. *Murdock,* 290 U. S. 389, 394; *Quercia* v. *United States,* 289 U. S. 466, 469. The court did not distort or add to the evidence, draw any unwarranted inferences, or mis-

lead the jury in any way. The judge was clearly correct in charging that the Area Director could not authorize petitioner to violate the law, but that the issue as to such alleged authorization went only to intent (R. 573); and that hard work would not excuse acceptance of a bribe (R. 574–575).

CONCLUSION

The judgment below is correct and the petition for a writ of certiorari presents no questions warranting review by this Court. It is therefore respectfully submitted that the petition should be denied.

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MAY 1953.

APPENDIX

18 U. S. C. (1946 ed.) 207 (35 Stat. 1109) provided:

> Whoever, being an officer of the United States, or a person acting for or on behalf of the United States, in any official capacity, under or by virtue of the authority of any department or office of the Government thereof; or whoever, being an officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, shall ask, accept, or receive any money, or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be fined not more than three times the amount of money or value of the thing so asked, accepted, or received, and imprisoned not more than three years; and shall, moreover, forfeit his office or place and thereafter be forever disqualified from holding any office of honor, trust, or profit under the Government of the United States.

18 U. S. C. (1946 ed. Supp. V) 202, provides:

> Whoever, being an officer or employee of, or person acting for or on behalf of the

United States, in any official capacity, under or by virtue of the authority of any department or agency thereof, or an officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, asks, accepts, or receives any money, or any check, order, contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be fined not more than three times the amount of such money or value of such thing or imprisoned not more than three years, or both; and shall forfeit his office or place and be disqualified from holding any office of honor, trust, or profit under the United States.

This section shall not apply to violations of section 213 of this title.

50 U. S. C. App. (1946 ed., Supp. I) 1894 (e) (1) (61 Stat. 193, 198), effective July 1, 1947, provided, in part:

(e) (1) The Housing Expediter is authorized and directed to create in each defense-rental area, or such portion thereof as he may designate, a local advisory board, each such board to consist of not less than five members who are representative citizens of the area, to be appointed by the Housing Expediter, from recommendations made by the respective Governors. Each such board shall have sufficient members to enable it promptly to consider individual

adjustment cases coming before it on which the board shall make recommendations to the officials administering this title [sections 1891–1902 of this Appendix] within its area. The local boards may make such recommendations to the Housing Expediter as they deem advisable with respect to the following matters:

(A) Decontrol of the defense-rental area or any portion thereof;

(B) The adequacy of the general rent level in the area; and

(C) Operations generally of the local rent office, with particular reference to hardship cases.

(2) The Housing Expediter shall furnish the local boards suitable office space and stenographic assistance and shall make available to such boards any records and other information in the possession of the Housing Expediter with respect to the establishment and maintenance of maximum rents and housing accommodations in the respective defense-rental areas which may be requested by such boards.

(3) Within thirty days after receipt of any recommendation of a local board such recommendation shall be approved or disapproved or the local board shall be notified in writing of the reasons why final action cannot be taken in thirty days. Any recommendation of a local board appropriately substantiated and in accordance with applicable law and regulations shall be approved and appropriate action shall promptly be taken to carry such recommendation into effect.

50 U. S. C. App. (1946 ed., Supp. II) 1894 (e) (1) (61 Stat. 197, as amended, 62 Stat. 93, 94), effective April 1, 1948, provided in part:

> (e) (1) The Housing Expediter is authorized and directed to create in each defense-rental area, or such portion thereof as he may designate, a local advisory board, each such board to consist of not less than five members who are citizens of the area and who, insofar as practicable, as a group are representative of the affected interests in the area, to be appointed by the Housing Expediter, from recommendations made by the respective Governors: *Provided,* That in any case where the Governor has made no recommendations for original appointments to local boards or appointments to fill vacancies, within thirty days after request therefor (subsequent to the date of enactment of the Housing and Rent Act of 1948 [March 30, 1948]) from the Housing Expediter, the Housing Expediter shall without such recommendations appoint the original members of such boards or such members as may be required to fill vacancies. Nothing in the foregoing provisions shall require the reappointment of present members of local advisory boards, but any change in the membership of any local advisory board necessitated by this provision shall be effectuated as promptly as may be practicable. Each such board shall have sufficient members to enable it promptly to consider individual adjustment cases coming before it on which the board shall make recommendations to the officials administering this title [sections 1891–1902 of this title] within its area; and before recom-

mending any such adjustment the board shall give notice to the parties and shall hold a hearing at the request of either party. Any local board may make such recommendations to the Housing Expediter as it deems advisable with respect to the following matters:

(A) Removal of any or all maximum rents in the area, or any portion thereof, over which the local board has jurisdiction, or with respect to any class of housing accommodations within such area or any portion thereof, if in the judgment of the local board the need for continuing maximum rents in such area or portion thereof or with respect to such class of housing accommodations no longer exists, due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met; and

(B) Adjustments, other than individual adjustments, in maximum rents in such area or any portion thereof or with respect to any class of housing accommodations within such area or any portion thereof, deemed by the local board to be necessary to remove hardships or to correct other inequities, or further to carry out the purposes and provisions of this title; and

(C) Operations generally of the local rent office with particular reference to hardship cases.

(2) The Housing Expediter shall furnish the local boards suitable office space and stenographic assistance and shall make available to such boards any records and other information in the possession of the Housing Expediter with respect to the establishment and maintenance of maximum

rents and housing accommodations in the respective defense-rental areas which may be requested by such boards.

(3) Upon receipt of any recommendation from a local board, the Housing Expediter shall promptly notify the local board, in writing, of the date of his receipt of such recommendation. Except as provided hereinafter in this subsection, within thirty days after receipt of any recommendation of a local board such recommendation shall be approved or disapproved or the local board shall be notified in writing of the reasons why final action cannot be taken in thirty days. Any recommendation of a local board appropriately substantiated and in accordance with applicable law and regulations shall be approved and appropriate action shall promptly be taken to carry such recommendation into effect.

U. S. GOVERNMENT PRINTING OFFICE: 1953